

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATIONS Nos 1678 & 1680 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AMBALAL SOMABHAI PARMAR

Versus

LILAVATI WD/O INDULAL M GUPTA

Appearance:

MISS VP SHAH for Petitioners

MR SK BUKHARI for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 12/07/96

ORAL JUDGEMENT

As in these two civil revision application common question of law and fact is involved, they are heard and disposed of by this common order.

The respondent filed two suits being Small Causes Suits Nos. 1317 of 1977 and 473 of 1980 against the defendants. Small Cause Suit No. 1317 of 1977 was filed for recovery of the possession of the room let out originally to one Shantaben for residence on a monthly rent of Rs. 15/. She however, left suit room and was

not traceable. She inducted deceased Ambalal in the suit room. Petitioners are the heirs and legal representatives of the deceased Ambalal. Said Ambalal used to send rent to the respondent, who according to her accepted it inadvertently. It appears that the petitioners started making additions and alterations in the suit room, as also in the wada portion which was not let out to them. The respondent therefore, filed the suit being Small Cause Suit No. 1317 of 1977 for an injunction restraining the petitioners from putting up any construction on the suit property and the wada portion. The respondent also filed another suit being Rent Suit No. 473 of 1980 on various grounds namely that, said Ambalal was not a lawful tenant of the said premises, and the money order sent by him was accepted by the respondent because she was of unsound mind and even if the deceased Ambalal was a tenant, in that event also, he has committed breach of the terms of the tenancy by encroaching upon the wada land and obstructing the passage of the respondent. The suit was filed also on the ground that the deceased Ambalal was not using the suit premises for residence but had converted it for non-residential purpose and has made a permanent structure and alternations in the property without the consent of the landlord. It was also contended that the petitioners have obtained alternate suitable residence other than the suit premises, and that they were in arrears of rent for more than six months.

The learned trial judge after considering the evidence on record passed judgment and decree in favour of the respondent by holding that the petitioner has made permanent structure by carrying out additions and alternations in the suit premises without the consent of the respondent. The learned trial judge has also recorded a finding that the petitioners have changed the user of the suit property and, that they are causing nuisance and annoyance to the respondent. Regarding arrears of rent, the trial court has recorded a finding that the petitioners have failed to pay the rent due for more than six months and the petitioners have not shown their readiness and willingness to pay the same. The trial court has also recorded a finding that the petitioners have acquired alternative suitable residence other than the suit premises, and that they are not using the suit premises for more than six months without just, proper and reasonable ground. In view of this, the trial court has granted decree in favour of the respondent to recover the possession of the suit premises from the petitioners. The trial court has also granted an injunction against the petitioners restraining them from

making permanent structure on the said property and from using the wada for any other purpose.

Against the said order, two appeals being Reg. Civil Appeal No. 53 of 1986 and 54 of 1986 have been preferred before the learned District Court, Surat. The learned District Judge, Surat by his common order dated 17.3.1994 dismissed both the appeals with costs and confirmed the judgment and decree passed by the learned trial judge. The learned District Judge, directed the petitioner to handover the vacant and peaceful possession of the suit premises to the respondent within two months from the date of the judgment. The petitioners have challenged the said common judgment and order by way of these two revision applications before this Court.

I have heard Ms. V.P. Shah learned counsel appearing for the petitioners and Mr. S.K. Bukhari learned advocate appearing for the respondent at length. Miss Shah contended that the suit filed on behalf of Lilavati widow of Indulal Motiram Gupte by her guardian and next friend Ghanshyambhai is not maintainable. In the submission of Miss Shah there is no satisfactory evidence on record which would go to suggest that Bai Lilavati was of unsound mind and that it was also her contention that the court has not followed the procedure of appointment of Ghanshyambhai as guardian and next friend of Lilavatiben. Miss Shah further contended that Small Causes Court has no jurisdiction to decide the dispute regarding the use of the wada.

None of the submissions has impressed me. Now, in the instant case, as stated above, two separate suits were filed. As far as the suit for recovery of possession of the room is concerned, it was in the capacity of landlord and tenant, while the other suit was for an injunction restraining the petitioners from carrying out any construction on the property and letting it out. It appears, that with the consent, suits were consolidated and the evidence was also recorded in one suit. Now having agreed the consolidation of the two suits and to decide the dispute by filing a joint pursis without raising the question of jurisdiction before the trial court, it does not lie in the mouth of the petitioners now to raise the contention regarding the jurisdiction of the trial court to decide the suit. It was only when the judgment of the trial court went against the petitioners that the question of jurisdiction was raised before the lower appellate court. The lower appellate court after considering the latest law on the subject, has rejected the said contention. Suffice it to

say that I am in total agreement with the view expressed by the lower appellate court. In view of this, the contention regarding the jurisdiction raised on behalf of the petitioners is rejected.

Regarding the contention as to whether Shri Ghanshyambhai Gupte was entitled to file a suit as a next friend and guardian of Bai Lilavati, the lower appellate court has given cogent and convincing reasons, and I do not want to take any exception to it. The evidence of Bai Lilavati is read over to me. Reading the same, it clearly appears that Bai Lilavati was of unsound mind and, therefore, the courts below have rightly held that the respondent is entitled to file the suit. The suit filed by the next friend and guardian on behalf of the plaintiff is properly filed and, therefore, maintainable.

The petitioners have clearly admitted in the evidence advanced on their behalf that they have acquired alternate premises.

In view of the facts that the suits were filed in the years 1977 and 1980 and they have been decided by the District Court in the year 1994, this court should be slow in entertaining the revision on such technical grounds, particularly in view of the fact that both the courts below have concurrently held against the petitioners on all the points. The fact that the defendant himself in his evidence stated that he has acquired premises at Lal Darwaja, Gulamvala Mill Compound and both the courts below, on the basis of this and on the basis of ration card, have held that the defendant and his family are residing there in the newly acquired premises, would further go to suggest that the petitioners are no more residing in the suit premises.

In view of this, I see no reasons to take a different view in the matter. There being no substance in these Civil Revision Applications, they are rejected with no order as to costs.

At this stage, Miss Shah requests that a reasonable time may be granted to vacate the suit premises. Considering the fact that the lower appellate court while rejecting the appeal has granted two months time in the year 1994 and these matters are being decided in the year 1996, I feel that the petitioners got more time than they have requested and, therefore, the request is rejected.
